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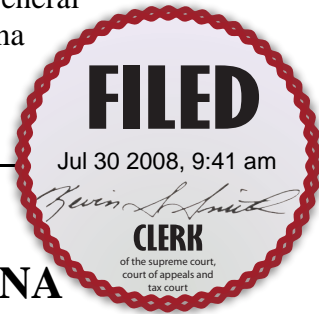
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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES SHARPE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0801-CR-61

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Stanley Kroh, Judge Pro Tem
Cause No. 49F24-0610-FD-194071

July 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Charles Sharpe was convicted of Resisting Law Enforcement,¹ a class D felony entered as a class A misdemeanor pursuant to Ind. Code § 35-50-2-7 (West, PREMISE through 2007 1st Regular Sess.). The sole issue on appeal is, did sufficient evidence support his conviction?

We affirm.

The facts most favorable to the conviction reveal that Indianapolis Police Department Officers Andrew Trittipo and Conrad Simpson were working crowd control during the Circle City Classic in Indianapolis on October 7, 2006. While clearing a large crowd that was blocking the east-west sidewalk at 110 West Washington Street, the officers encountered Sharpe sitting on a railing. The officers asked Sharpe to move west with the rest of the crowd. Sharpe stood up and responded, “fuck you.” *Transcript* at 11. The officers directed him westbound once again, and Sharpe replied in a similar manner. Officer Trittipo then placed his hand on Sharpe’s back and gently pushed him westward. Sharpe immediately turned around and said, “fuck you,...you can’t put your hands on me”. *Id.* at 12. The officers were standing almost elbow-to-elbow when Sharpe then attempted to walk between them to the east. Each officer grabbed an arm and tried to push Sharpe back, as Sharpe “tensed up and tried to force his way through.” *Id.* at 13. A “struggle” ensued as Sharpe “pull[ed] back and forth” and attempted to “break away from [their] grasp.” *Id.* at 14-15. Sharpe was ultimately forced to the ground and arrested. Though the struggle lasted only ten to fifteen seconds, it resulted in Officer Trittipo sustaining a traumatic injury to his right leg.

On appeal, Sharpe contends the evidence was not sufficient to show that he used force

¹ Ind. Code Ann. § 35-44-3-3 (West, PREMISE through 2007 1st Regular Sess.).

in resisting law enforcement. He claims he simply tensed up and had no opportunity to exert force in the ten to fifteen seconds before he was taken to the ground.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review “respects ‘the [fact-finder]’s exclusive province to weigh conflicting evidence.” *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the judgment, we must affirm “‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

I.C. § 35-44-3-3 prohibits a person from, among other things, knowingly or intentionally using force to resist a law enforcement officer while the officer is lawfully engaged in the execution of his or her duties as an officer. The forcible nature of the alleged resistance is an essential element of the offense of resisting law enforcement, and therefore the State is required to prove that element at trial. *Shoultz v. State*, 735 N.E.2d 818 (Ind. Ct. App. 2000), *trans. denied*. The “forcibly resists” element is not satisfied if a defendant does nothing more than stand his or her ground. *Ajabu v. State*, 704 N.E.2d 494 (Ind. Ct. App. 1998). Rather, “force” is used in this context when an individual directs strength, power, or violence toward police officers, or when he or she makes a threatening gesture or movement in their direction. *Wellman v. State*, 703 N.E.2d 1061 (Ind. Ct. App. 1998).

Contrary to Sharpe’s assertions on appeal, he did not simply tense up his arms.

Rather, he attempted to force his way through the officers to go the opposite direction in which he had been directed to move. Then, when the officers lawfully grabbed his arms to redirect him, Sharpe struggled to get free from their grasp. While the struggle lasted only a short time, it resulted in a serious injury to Officer Trittipo. This evidence was clearly sufficient to prove the “forcibly” element of resisting law enforcement, and we reject Sharpe’s invitation to reweigh the evidence and judge witness credibility.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur